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14 Attorneys for Plaintiff Oyster Optics, LLC

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

14 OYSTER OPTICS, LLC,

15 Plaintiff,

16 v.

17 CIENA CORPORATION,

18 Defendant.

Case No. 4:17-cv-05920-JSW

**OMNIBUS DECLARATION OF PAUL A. KROEGER IN SUPPORT OF PLAINTIFF OYSTER OPTICS, LLC'S OPPOSITIONS TO CIENA CORPORATION'S MOTION FOR SUMMARY JUDGMENT; MOTION TO EXCLUDE THE INFRINGEMENT OPINIONS AND TESTIMONY OF PLAINTIFF'S TECHNICAL EXPERT, KEITH GOSSEN, PH.D., UNDER FED. R. EVID. 702 AND DAUBERT; MOTION TO EXCLUDE THE VALIDITY OPINIONS AND TESTIMONY OF PLAINTIFF'S TECHNICAL EXPERT, KEITH GOOSSEN, PH.D., UNDER FED. R. 702 AND DAUBERT; AND MOTION TO EXCLUDE THE OPINIONS AND TESTIMONY OF PLAINTIFF'S DAMAGES EXPERT, STEPHEN DELL, PH.D., UNDER FED. R. 702 AND DAUBERT**

1 I, Paul A. Kroeger, state as follows:

2 1. I am a member of the State Bar of California and an attorney at the firm of Russ  
3 August & Kabat, counsel for Plaintiff Oyster Optics, LLC (“Oyster”) in the above captioned action.  
4 I have personal knowledge of the facts set forth herein, and if called upon to testify, could and would  
5 testify competently thereto.

6 2. Attached as Exhibit A is a true and correct copy of excerpts from a document that  
7 was produced by Ciena in this Action bearing the title “WaveLogic3 Transmitter Electro Optic  
8 Design Specification” and which bears a production number commencing with CIENA00102862.

9 3. Attached as Exhibit B is a true and correct copy of an excerpt from Patent Owner’s  
10 Preliminary Response in *Cisco Systems, Inc., et al. v. Oyster Optics, LLC*, Case No. IPR2017-01871,  
11 filed on October 28, 2017.

12 4. Attached as Exhibit C is a true and correct copy of an excerpt from the Institution  
13 Decision in *Cisco Systems, Inc., et al. v. Oyster Optics, LLC*, Case No. IPR2017-01871, filed on  
14 February 21, 2018.

15 5. Attached as Exhibit D is a true and correct copy of excerpts from Dino DiPerna’s  
16 January 27, 2021 Deposition Transcript.

17 6. Attached as Exhibit E is a true and correct copy of an excerpt from a document  
18 produced by Ciena in this action with the production number CIENA00001617. The document was  
19 produced as excel spreadsheet and purports to be a “Bill of Materials” or “BOM” for the Ciena  
20 WaveLogic3 product NTK539BB. The document attached here has been converted to pdf for the  
21 convenience of e-filing.

22 7. Attached as Exhibit F is a true and correct copy of excerpts from Ciena Corporation’s  
23 Third Supplemental Objections and Responses to Oyster’s First Set of Interrogatories Nos. 1-2 dated  
24 February 23, 2021.

25 8. Attached as Exhibit G is a true and correct copy of an excerpt from a document  
26 produced by Ciena in this action with the production number CIENA00001618. The document was  
27 produced as excel spreadsheet and purports to be a “Bill of Materials” or “BOM” for the Ciena  
28

1 WaveLogic3 product NTK539BE. The document attached here has been converted to pdf for the  
2 convenience of e-filing.

3 9. Attached as Exhibit H is a true and correct copy of an excerpt from a document  
4 produced by Ciena in this action with the production number CIENA00001619. The document was  
5 produced as excel spreadsheet and purports to be a “Bill of Materials” or “BOM” for the Ciena  
6 WaveLogic3 product NTK539BH. The document attached here has been converted to pdf for the  
7 convenience of e-filing.

8 10. Attached as Exhibit I is a true and correct copy of an excerpt from is a true and correct  
9 copy of an excerpt from a document produced by Ciena in this action with the production number  
10 CIENA00071459. The document was produced as excel spreadsheet and purports to be a “Bill of  
11 Materials” or “BOM” for the Ciena WaveLogic3 product NTK539BB. The document attached here  
12 has been converted to pdf for the convenience of e-filing.

13 11. Attached as Exhibit J is a true and correct copy of excerpts from Steve Haley’s  
14 January 28, 2021 Deposition Transcript.

15 12. Attached as Exhibit K is a true and correct copy of an excerpt from the Petition for  
16 *Inter Partes* Review in *Alcatel-Lucent USA, LLC, etc. v. Oyster Optics, LLC*, Case No. IPR2018-  
17 00259, filed on November 30, 2017.

18 13. Attached as Exhibit L is a true and correct copy of Plaintiff’s Disclosure of Asserted  
19 Claims and Infringement Contentions, served on April 3, 2017.

20 14. Attached as Exhibit M is a true and correct copy of an email from counsel for Plaintiff  
21 to counsel for Defendant regarding Fujitsu modulators, dated February 10, 2021.

22 15. Attached as Exhibit N is a true and correct copy of Oyster Optics, LLC’s Third  
23 Amended and Supplemental Preliminary Damages Contentions, served on February 24, 2021.

24 16. Attached as Exhibit O is a true and correct copy of an excerpt from Exhibit B to  
25 Plaintiff’s Infringement Contentions, setting forth a chart of its specific accusations for the ‘327  
26 Patent, served on April 3, 2017.

1 17. Attached as Exhibit P is a true and correct copy of an excerpt from Stephen Dell's  
2 Third Supplemental Expert Report, served on April 30, 2018.

3 18. Attached as Exhibit Q is a true and correct copy of the Declaration of Dr. Keith  
4 Goossen in Support of Plaintiff's Opposition to Defendant Ciena's Motion for Summary Judgment  
5 and Motions to Strike. This attaches and authenticates and adopts as his testimony Dr. Goossen's  
6 Invalidity Report served in this action as well as his infringement report attached as Exhibit 1 to  
7 Ciena's declaration.

8 19. Attached as Exhibit R is a true and correct copy of an excerpt from Dr. George  
9 Papen's Expert Report regarding Validity, served on February 26, 2021.

10 20. Attached as Exhibit S is a true and correct copy of excerpts from Dr. Keith Goossen's  
11 April 8, 2021 and April 9, 2021 Deposition Transcripts.

12 21. Attached as Exhibit T is a true and correct copy of a declaration Dr. Goossen  
13 authored in an IPR (IPR2017-01881) concerning the '898 Patent and which was produced to Ciena  
14 in this action bearing the production number OYST\_CIEN00005500.

15 22. Attached as Exhibit U is a true and correct copy of a declaration Dr. Goossen  
16 authored in an IPR (IPR2018-000070) concerning the '898 Patent and which was produced to Ciena  
17 in this action bearing the production number OYST\_CIEN00012009.

18 23. Attached as Exhibit V is a true and correct copy of an expert report authored by Dr.  
19 Goossen in *Oyster Optics, Inc. v. Infinera*, Civil Action No. 2:18-cv-00206, and which was produced  
20 to Ciena in this bearing the production number OYST\_CIEN00030166.

21 24. Attached as Exhibit W is a true and correct copy of an email thread from March 29-  
22 30, 2021 regarding the parties' agreement to depose Dr. Goossen.

23 25. Attached as Exhibit X is a true and correct copy of an email thread from March 21-  
24 22, 2021 regarding 40G products.

25 26. Attached as Exhibit Y is a true and correct copy of an excerpt from Optical  
26 Internetworking Forum, "100G Ultra Long Haul DWDM Framework Document" which was  
27 attached as Exhibit 3 to Plaintiffs' Infringement Contentions.

I declare under penalty of perjury under the laws of the United States the foregoing is true and correct Executed on June 21, 2021 at Los Angeles, California.

/s/ Paul A. Kroeger  
Paul A. Kroeger